

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 05-72426

HONORABLE DENISE HOOD
MAGISTRATE JUDGE STEVEN PEPE

v.

ONE 2004 MERCEDES BENZ SL55K AMG
(VIN: WDBSK74FX4F078720), ONE 2004
DODGE DURANGO (VIN: ID4HB58D04F189689),
TWO THOUSAND SIX HUNDRED THIRTY-FOUR
DOLLARS AND FORTY-EIGHT CENTS (\$2,634.48)
IN U.S. CURRENCY, AND ONE MEN'S ROLEX
MASTERPIECE WATCH,

Defendants-in-rem,

and

KENNETH DARNELL WESLEY, L'TANYA BARNEY,
AND DENISE BALDWIN

Claimants.

**REPORT AND RECOMMENDATION GRANTING PLAINTIFF'S MOTION FOR
ORDER STRIKING CLAIMS AND ANSWERS OF KENNETH DARNELL WESLEY,
L'TANYA BARNEY, AND DENISE BALDWIN (Dkt.#44)**

On November 11, 2006, Plaintiff, the United States of America, filed its motion pursuant to Fed. R. Civ. P. 37(b)(2)(C) seeking an order striking the claims and answers filed by L'Tanya Barney, Denise Baldwin and Kenneth Darnell Wesley for their failure to produce requested

discovery and their non-compliance with the undersigned's October 4, 2006, Order (Dkt. #44). The motion was referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons indicated below IT IS RECOMMENDED THAT Plaintiff's motion be GRANTED.

This civil forfeiture action was commenced by the government filing a Complaint on June 20, 2005. On July 15, 2005, a claim and answer were filed on behalf of Kenneth Darnell Wesley by his attorney, Ben Gonek. Mr. Wesley claimed an interest in the Defendant Mercedes (Dkt. ##3, 4). On August 10, 2005, claims were filed on behalf of L'Tanya Barney and Denise Baldwin by their attorney, Marshall E. Goldberg (Dkt. ##10, 11). Their answers to the Complaint for Forfeiture were filed on September 14, 2005 (Dkt. ##15, 18). Ms. Baldwin and Ms. Barney claimed an interest in the Defendant Durango. There have been no other claims filed regarding any of the defendants-in-rem property.

On September 30, 2005, this Court granted an order staying the civil forfeiture case pending resolution of a related criminal case (Dkt #22). After one extension, the stay expired on May 28, 2006. A scheduling conference was held on May 30, 2006, and a scheduling order was issued providing for the completion of discovery by September 14, 2006 (Dkt. #32). On June 6, 2006, Plaintiff served Attorney Goldberg, by mail, with copies of Plaintiff's First Sets of Interrogatories, Requests for Admissions, and Requests for Production of Documents to L'Tanya Barney and to Denise Baldwin. On that same day, Plaintiff served Ben Gonek with Plaintiff's First Set of Interrogatories, Request for Admissions, and Request for Production of Documents to Kenneth Darnell Wesley. The discovery requests were propounded pursuant to Rules 33, 34 and 36 of the Federal Rules of Civil Procedure, and inquired into various aspects of Claimants'

interests in the Defendant Mercedes and the Defendant Durango. Pursuant to Rules 33, 34 and 36, the Claimants' written responses to each discovery request, request for admission and responsive documents were due on or before July 10, 2006.

On August 21, 2006, Plaintiff filed its Motion to Compel Discovery indicating it had not received any responses from Claimants to any of its discovery requests (Dkt. #36). A telephonic hearing was conducted on October 3, 2006, in which Plaintiff's motion was discussed, as well as Attorney Gonek's Motion to Withdraw as Attorney of Record for Claimant Wesley due to his inability to contact his client.¹ Attorney Goldberg represented Claimants Barney and Baldwin at the hearing. The undersigned issued an October 4, 2006, Order, which granted Plaintiff's Motion to Compel Discovery, but allowed Claimant Wesley and Claimant Barney until November 3, 2006, to respond to all discovery requests (Dkt. #42).²

The Order further indicated that failure to comply with this Order may result in FED. R. Civ. P. 37(b)(2) sanctions, including but not limited to resolution of this action on the merits. Moreover, the Order gave specific notice to Claimant Wesley that he was to obtain new counsel or proceed on his own. In addition, it informed him that if he failed to comply with this Order

¹ On July 20, 2006, Attorney Gonek informed the Court that he had been unable to contact Claimant to discuss this matter and proceed with discovery. Accordingly, my Courtroom Deputy Clerk mailed a September 20, 2006, letter to Claimant Wesley indicating his attorney's intent to withdraw as his counsel, informing him of his responsibilities in regards to this motion and asking him to participate in the scheduled hearing. No response was received and Claimant did not attend the hearing. Therefore, because there had been a breakdown in the attorney-client relationship, Attorney Gonek's Motion to Withdraw as Attorney of Record was granted.

² Claimant Baldwin's attorney, Marshall Goldberg, indicated on the record that Claimant would accept a default in this case and a stipulated order would be submitted. In Plaintiff's present motion, it indicates that an October 10, 2006, draft stipulation was faxed to Mr. Goldberg and an October 23, 2006, follow-up message was left for Mr. Goldberg to forward the signed stipulation. No response, or a signed stipulation was received.

that he answer the Plaintiff's discovery by November 3, 2006, he was subject to having his claim stricken or dismissed under FED. R. CIV. P. 37(b)(2)(c). Plaintiff states that as of the date of its filing of the present motion, no discovery responses or communications requesting additional time have been received from any of the claimants or their attorneys.

Because Claimants have not complied with the undersigned's October 4, 2006, Order, and pursuant to its explicit provisions regarding sanctions under FED. R. CIV. P. 37(b)(2), IT IS RECOMMENDED that Plaintiff's motion be GRANTED and an order be entered striking the Claims and Answers of Kenneth Darnell Wesley, Denise Baldwin and L'Tanya Barney.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local*, 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall

address specifically, and in the same order raised, each issue contained within the objections.

Dated: December 19, 2006
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2006, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: Tauras N. Ziedas, AUSA, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Marshall E. Goldberg, 615 Griswold, Ste. 1125, Detroit, MI 48226-3910, Ben M. Gonek, 615 Griswold, Ste., 1300, Kenneth Darnell Wesley, 17500 Evergreen Rd., Detroit, MI 48219

s/ James P. Peltier
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